

DeLanda



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American KAL Enterprises, Inc.

File: B-232677.3

Date: February 3, 1989

DIGEST

1. Although an amendment to a solicitation does not specifically request offerors to submit best and final offers (BAFOs), language giving notice to all offerors of a common cutoff date for receipt of revised offers has the intent and effect of a request for BAFOs.

2. Protest is untimely when filed at the General Accounting Office more than 10 working days after the basis of the protest is known.

DECISION

American KAL Enterprises, Inc. protests the award of a contract to Techni-Tool, Inc. under request for proposals (RFP) No. FCEP-AV-F7414/1-N, issued by the General Services Administration (GSA) for tool kits. American KAL claims that GSA acted improperly by awarding the contract to Techni-Tool without requesting best and final offers (BAFOs). American KAL also claims that GSA acted improperly by not accepting a price revision contained in a proposal modification which it submitted after the due date for revised offers.

We deny the protest in part and dismiss it in part.

American KAL submitted its initial offer under the solicitation by the closing date of May 17, 1988. Amendment no. 1, providing new technical data, was issued on June 1. A cover letter transmitting the amendment advised offerors that any proposal modifications containing price revisions based on the new data were due on June 17. American KAL submitted a revised proposal containing a price modification on July 8. By letter dated August 4, the contract

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specialist informed American KAL that its revised offer was not acceptable because it was late. GSA awarded a contract under the RFP to Techni-Tool on October 20. American KAL then filed the present protest on October 31.

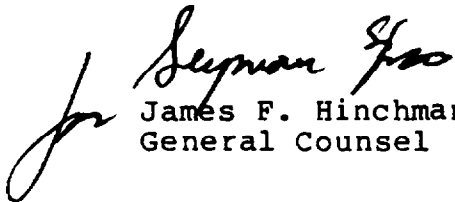
American KAL claims that the award was improper because GSA never requested BAFOs. Generally, in a negotiated procurement, a contracting agency must conduct written or oral discussions with all offerors in the competitive range before awarding a contract. Where the contracting agency identifies no significant technical deficiencies in the proposals, discussions may be limited to an opportunity to submit revised proposals. Metron Corp., B-227014, June 29, 1987, 87-1 CPD ¶ 642. Upon completion of discussions, the contracting officer must issue a request for BAFOs notifying offerors that discussions are completed and establishing a common cutoff date for submission of BAFOs. Federal Acquisition Regulation § 15.611(b). Here, while the letter calling for revised offers did not explicitly refer to submission of BAFOs, we do not think that the protester was prejudiced as a result, since no detailed discussions were required and the letter clearly advised the protester and the other offerors that they were being given the opportunity to submit revised proposals in response to amendment no. 1 by a common cutoff date. In our view, it was unreasonable for the protester in effect to ignore the common cutoff date for revised offers set by the letter in the expectation that the agency subsequently would call for yet another round of revised offers.

The protester also argues that GSA improperly rejected the revised offer it submitted on July 8, well after the June 17 due date set by amendment no. 1. American KAL previously raised this issue in a protest filed with our Office on September 20. We dismissed that protest as untimely since it was filed more than 10 days after August 17, the date on which American KAL stated that it was notified that GSA had rejected its revised offer. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988). Similarly, the current protest is untimely to the extent it raises this issue.

In any event, the protester's argument is without merit. The protester argues that its submission of a price revision was consistent with a statement by GSA in a letter to the protester generally addressing the difference between negotiated procedures and sealed bidding, to the effect that under an RFP offerors may initiate price revisions if market conditions or their business situation change. Based on that letter, the protester apparently concluded that

offerors may submit price revisions at any time during the procurement. The protester's interpretation is incorrect, however. Revisions to offers received after the due dates established in a particular procurement cannot be considered except under limited circumstances not present in this case, such as where the late receipt was due to government mishandling of the offer. See United Tractor Co., B-251127, Apr. 29, 1988, 88-1 CPD ¶ 428. As a result, since American KAL's revised offer was not submitted by the due date for revised offers, GSA properly rejected it as a late modification.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel